

AMENDED IN SENATE MARCH 21, 2011

**SENATE BILL**

**No. 364**

**Introduced by Senator Yee**

February 15, 2011

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An act to add Sections ~~17060~~ 6372, 17060, and 23603 to the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 364, as amended, Yee. ~~Income~~ *Sales and use taxes: income taxes: business tax incentives: reporting information and recapture penalty.*

The *Sales and Use Tax Law*, the *Personal Income Tax Law*, and the *Corporation Tax Law* authorize various credits, deductions, exclusions, exemptions, and other tax benefits with respect to the taxes imposed by those laws.

~~This bill would require a taxpayer, as described, doing business in California that claims a business tax incentive, as provided, to submit to the Franchise Tax Board on the original return specified information, including the number of employees employed by the taxpayer in the state.~~

~~The bill would also require the recapture of a business tax incentive allowed by an act that is effective on or after January 1, 2012, if a disqualifying event occurs resulting in a net decrease in the number of full-time employees.~~

*This bill would, with respect to any specified business tax incentive enacted after January 1, 2012, require a qualified taxpayer, as defined, to pay a penalty in the amount of \$5,000 for each full-time job that is a net decrease over a 10% decrease in workforce. This bill would limit the amount of this penalty to the total value of specified tax benefits*

*claimed on the tax return or returns of the previous calendar or taxable year.*

*This bill would also require a taxpayer doing business in California that claims a business tax incentive to submit to the State Board of Equalization or the Franchise Tax Board on the original return specified information, including the number of employees employed by the taxpayer in the state.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 6372 is added to the Revenue and*  
2     *Taxation Code, to read:*

3     *6372. (a) Notwithstanding any other law, for calendar years*  
4     *beginning on or after January 1, 2012, a qualified taxpayer doing*  
5     *business in this state that claims any business tax incentive shall*  
6     *annually include on a timely filed original return, in the form and*  
7     *manner as required by forms and instruction prescribed by the*  
8     *board, the number of qualified full-time employees, part-time*  
9     *employees, and temporary employees employed by the qualified*  
10    *taxpayer in the state for the current calendar year and the*  
11    *preceding calendar year.*

12    *(b) For purposes of this section:*

13    *(1) "Annual full-time equivalent" means either of the following:*

14    *(A) In the case of a qualified full-time employee paid hourly*  
15    *qualified wages, "full-time equivalent" means the total number*  
16    *of hours worked for the qualified taxpayer by the employee (not*  
17    *to exceed 1,820 hours per employee) divided by 1,820.*

18    *(B) In the case of a salaried qualified full-time employee,*  
19    *"full-time equivalent" means the total number of weeks worked*  
20    *for the qualified taxpayer by the employee divided by 52.*

21    *(2) "Business tax incentive" means a credit, deduction,*  
22    *exclusion, exemption, or any other tax benefit, provided by the*  
23    *state and added by an act that takes effect beginning on or after*  
24    *January 1, 2012, with the purpose of creating jobs in the state.*

25    *(3) "Qualified full-time employee" means:*

26    *(A) A qualified employee who was paid qualified wages by the*  
27    *qualified taxpayer for services of not less than an average of 35*  
28    *hours per week.*

1     (B) *A qualified employee who was a salaried employee and was*  
2 *paid compensation during the taxable year for full-time*  
3 *employment, within the meaning of Section 515 of the Labor Code,*  
4 *by the qualified taxpayer.*

5     (4) *“Qualified taxpayer” means a taxpayer engaged in or*  
6 *carrying on a trade, business, profession, vocation, calling, or*  
7 *commercial activity, in the state, with 101 or more employees.*

8     (5) *“Qualified wages” means wages subject to Division 6*  
9 *(commencing with Section 13000) of the Unemployment Insurance*  
10 *Code.*

11     (c) *Notwithstanding any other law, if a qualified taxpayer that*  
12 *claims a business tax incentive against the sales and use taxes*  
13 *imposed under this part has a net decrease in the number of*  
14 *qualified full-time employees, determined on an annual full-time*  
15 *equivalent basis, equal to or greater than 10 percent of the total*  
16 *workforce of the qualified taxpayer in this state, the qualified*  
17 *taxpayer shall be subject to a penalty in the amount specified in*  
18 *subdivision (d).*

19     (d) *The penalty shall be five thousand dollars (\$5,000) for each*  
20 *qualified full-time employee that is a net decrease over the decrease*  
21 *of 10 percent of the workforce of the qualified taxpayer in this*  
22 *state. The penalty shall not exceed the total value of business tax*  
23 *incentives claimed by the qualified taxpayer on the tax returns of*  
24 *the previous calendar year.*

25     (1) *The net decrease in qualified full-time employees shall be*  
26 *determined on an annual full-time equivalent basis by subtracting*  
27 *the amount determined in subparagraph (A) from the amount*  
28 *determined in subparagraph (B).*

29     (A) *The total number of qualified full-time employees determined*  
30 *on an annual full-time equivalent basis employed in the preceding*  
31 *calendar year by the qualified taxpayer and by a trade or business*  
32 *acquired by the qualified taxpayer during the current calendar*  
33 *year.*

34     (B) *The total number of qualified full-time employees determined*  
35 *on an annual full-time equivalent basis employed in the current*  
36 *calendar year by the qualified taxpayer and by a trade or business*  
37 *acquired during the current calendar year.*

38     (2) *All employees of the trades or businesses that are treated*  
39 *as related under either Section 267, 318, or 707 of the Internal*

1 Revenue Code shall be treated as employed by a single qualified  
2 taxpayer.

3 SEC. 2. Section 17060 is added to the Revenue and Taxation  
4 Code, to read:

5 17060. (a) Notwithstanding any other law, for taxable years  
6 beginning on or after January 1, 2012, a qualified taxpayer doing  
7 business in this state that claims any business tax incentive shall  
8 annually include on a timely filed original return, in the form and  
9 manner as required by forms and instruction prescribed by the  
10 Franchise Tax Board, the number of qualified full-time employees,  
11 part-time, and temporary employees employed by the qualified  
12 taxpayer in the state for the current taxable year and the preceding  
13 taxable year.

14 (b) For purposes of this section:

15 (1) "Annual full-time equivalent" means either of the following:

16 (A) In the case of a qualified full-time employee paid hourly  
17 qualified wages, "full-time equivalent" means the total number  
18 of hours worked for the qualified taxpayer by the employee (not  
19 to exceed 1,820 hours per employee) divided by 1,820.

20 (B) In the case of a salaried qualified full-time employee,  
21 "full-time equivalent" means the total number of weeks worked  
22 for the qualified taxpayer by the employee divided by 52.

23 (2) "Business tax incentive" means a credit, deduction,  
24 exclusion, exemption, or any other tax benefit, provided by the  
25 state and added by an act that takes effect beginning on or after  
26 January 1, 2012, with the purpose of creating jobs in the state.

27 (3) "Qualified full-time employee" means:

28 (A) A qualified employee who was paid qualified wages by the  
29 qualified taxpayer for services of not less than an average of 35  
30 hours per week.

31 (B) A qualified employee who was a salaried employee and was  
32 paid compensation during the taxable year for full-time  
33 employment, within the meaning of Section 515 of the Labor Code,  
34 by the qualified taxpayer.

35 (4) "Qualified taxpayer" means a taxpayer engaged in or  
36 carrying on a trade, business, profession, vocation, calling, or  
37 commercial activity, in the state, with 101 or more employees.

38 (5) "Qualified wages" means wages subject to Division 6  
39 (commencing with Section 13000) of the Unemployment Insurance  
40 Code.

1 (c) Notwithstanding any other law, if a qualified taxpayer that  
2 claims a business tax incentive against the “net tax,” as defined  
3 in Section 17039, has a net decrease in the number of qualified  
4 full-time employees, determined on an annual full-time equivalent  
5 basis, equal to or greater than 10 percent of the total workforce  
6 of the qualified taxpayer in this state, the qualified taxpayer shall  
7 be subject to a penalty in the amount specified in subdivision (d).

8 (d) The penalty shall be five thousand dollars (\$5,000) for each  
9 qualified full-time employee that is a net decrease over the decrease  
10 of 10 percent of the workforce of the qualified taxpayer in this  
11 state. The penalty shall not exceed the total value of business tax  
12 incentives claimed by the qualified taxpayer on the tax return of  
13 the previous taxable year.

14 (1) The net decrease in qualified full-time employees shall be  
15 determined on an annual full-time equivalent basis by subtracting  
16 the amount determined in subparagraph (A) from the amount  
17 determined in subparagraph (B).

18 (A) The total number of qualified full-time employees determined  
19 on an annual full-time equivalent basis employed in the preceding  
20 taxable year by the qualified taxpayer and by a trade or business  
21 acquired by the qualified taxpayer during the current taxable year.

22 (B) The total number of qualified full-time employees determined  
23 on an annual full-time equivalent basis employed in the current  
24 taxable year by the qualified taxpayer and by a trade or business  
25 acquired during the current taxable year.

26 (2) All employees of the trades or businesses that are treated  
27 as related under either Section 267, 318, or 707 of the Internal  
28 Revenue Code shall be treated as employed by a single qualified  
29 taxpayer.

30 SEC. 3. Section 23603 is added to the Revenue and Taxation  
31 Code, to read:

32 23603. (a) Notwithstanding any other law, for taxable years  
33 beginning on or after January 1, 2012, a qualified taxpayer doing  
34 business in this state that claims any business tax incentive shall  
35 annually include on a timely filed original return, in the form and  
36 manner as required by forms and instruction prescribed by the  
37 Franchise Tax Board, the number of qualified full-time employees,  
38 part-time employees, and temporary employees employed by the  
39 qualified taxpayer in the state for the current taxable year and the  
40 preceding taxable year.

1     (b) *For purposes of this section:*

2     (1) *“Annual full-time equivalent” means either of the following:*

3     (A) *In the case of a qualified full-time employee paid hourly*  
4 *qualified wages, “full-time equivalent” means the total number*  
5 *of hours worked for the qualified taxpayer by the employee (not*  
6 *to exceed 1,820 hours per employee) divided by 1,820.*

7     (B) *In the case of a salaried qualified full-time employee,*  
8 *“full-time equivalent” means the total number of weeks worked*  
9 *for the qualified taxpayer by the employee divided by 52.*

10    (2) *“Business tax incentive” means a credit, deduction,*  
11 *exclusion, exemption, or any other tax benefit, provided by the*  
12 *state and added by an act that takes effect beginning on or after*  
13 *January 1, 2012, with the purpose of creating jobs in the state.*

14    (3) *“Qualified full-time employee” means:*

15    (A) *A qualified employee who was paid qualified wages by the*  
16 *qualified taxpayer for services of not less than an average of 35*  
17 *hours per week.*

18    (B) *A qualified employee who was a salaried employee and was*  
19 *paid compensation during the taxable year for full-time*  
20 *employment, within the meaning of Section 515 of the Labor Code,*  
21 *by the qualified taxpayer.*

22    (4) *“Qualified taxpayer” means a taxpayer engaged in or*  
23 *carrying on a trade, business, profession, vocation, calling, or*  
24 *commercial activity, in the state, with 101 or more employees.*

25    (5) *“Qualified wages” means wages subject to Division 6*  
26 *(commencing with Section 13000) of the Unemployment Insurance*  
27 *Code.*

28    (c) *Notwithstanding any other law, if a qualified taxpayer that*  
29 *claims a business tax incentive against the “tax,” as defined in*  
30 *Section 23036, has a net decrease in the number of qualified*  
31 *full-time employees determined on an annual full-time equivalent*  
32 *basis, equal to or greater than 10 percent of the total workforce*  
33 *of the qualified taxpayer in this state, the qualified taxpayer shall*  
34 *be subject to a penalty in the amount specified in subdivision (d).*

35    (d) *The penalty shall be five thousand dollars (\$5,000) for each*  
36 *qualified full-time employee that is a net decrease over the decrease*  
37 *of 10 percent of the workforce of the qualified taxpayer in this*  
38 *state. The penalty shall not exceed the total value of business tax*  
39 *incentives claimed by the qualified taxpayer on the tax return of*  
40 *the previous taxable year.*

(1) The net decrease in qualified full-time employees shall be determined on an annual full-time equivalent basis by subtracting the amount determined in subparagraph (A) from the amount determined in subparagraph (B).

(A) The total number of qualified full-time employees determined on an annual full-time equivalent basis employed in the preceding taxable year by the qualified taxpayer and by a trade or business acquired by the qualified taxpayer during the current taxable year.

(B) The total number of qualified full-time employees determined on an annual full-time equivalent basis employed in the current taxable year by the qualified taxpayer and by a trade or business acquired during the current taxable year.

(2) All employees of the trades or businesses that are treated as related under either Section 267, 318, or 707 of the Internal Revenue Code shall be treated as employed by a single qualified taxpayer.

~~SECTION 1. Section 17060 is added to the Revenue and Taxation Code, to read:~~

~~17060. (a) Notwithstanding any other provision of this part, for taxable years beginning on or after January 1, 2012, a taxpayer doing business in this state that claims any business tax incentive shall annually include on the timely filed original return, in the form and manner as required by forms and instructions prescribed by the Franchise Tax Board, the number of full-time, part-time, and temporary employees, as defined, employed by the taxpayer in the state for the current and preceding taxable years.~~

~~(b) (1) Notwithstanding any other law, for any business tax incentive that is allowed by an act that takes effect in a taxable year beginning on or after January 1, 2012, if the taxpayer has a disqualifying event occur before the close of the recapture period, the business tax incentive shall be subject to recapture as specified in subdivision (c).~~

~~(2) For purposes of this section, “disqualifying event” means a net decrease, as determined under subdivision (c), in the average number of full-time equivalent employees, calculated as of the last day of the current taxable year.~~

~~(3) For purposes of this section, “recapture period” shall, with respect to the amount of any business tax incentive that reduces a taxpayer’s taxable income or “net tax” in the current taxable year, be the first full taxable year beginning after the close of the taxable~~

1 year in which the business tax incentive reduces either the  
2 taxpayer's taxable income or "net tax," as defined in Section 17039;  
3 and the four succeeding taxable years.

4 (4) For purposes of this subdivision, a "business tax incentive"  
5 means a credit, deduction, exclusion, exemption, or any other tax  
6 benefit provided by the state added by an act that takes effect  
7 beginning on or after January 1, 2012, enacted with the purpose  
8 of creating new jobs in the state, and allowed to taxpayers engaged  
9 in or carrying on any trade, business, profession, vocation or  
10 calling, or commercial activity in the state.

11 (e) (1) The net decrease in full-time equivalent employees in  
12 the state shall be determined, on and after January 1, 2015, on a  
13 full-time equivalent basis by subtracting from the amount  
14 determined in subparagraph (A) the amount determined in  
15 subparagraph (B):

16 (A) The total number of full-time equivalent employees in the  
17 state employed in the three preceding taxable years by the taxpayer  
18 and by any trade or business acquired by the taxpayer during the  
19 current taxable year, divided by three.

20 (B) The total number of full-time equivalent employees  
21 employed in the state in the current taxable year by the taxpayer  
22 and by any trade or business acquired by the taxpayer during the  
23 current taxable year.

24 (C) For purposes of this paragraph, employees in the state who  
25 are employed in any trade or business sold by a taxpayer shall be  
26 excluded in the determination of the amounts in subparagraphs  
27 (A) and (B):

28 (2) "Full-time equivalent" means either of the following:

29 (A) In the case of a full-time employee paid hourly qualified  
30 wages, "full-time equivalent" means the total number of hours  
31 worked for the taxpayer by the employee (not to exceed 2,000  
32 hours per employee) divided by 2,000.

33 (B) In the case of a salaried full-time employee, "full-time  
34 equivalent" means the total number of weeks worked for the  
35 taxpayer by the employee divided by 52.

36 (3) All employees of the trades or businesses that are treated as  
37 related under either Section 267, 318, or 707 of the Internal  
38 Revenue Code shall be treated as employed by a single taxpayer.

39 (d) For purposes of this section, all of the following definitions  
40 apply:



1     ~~(1) “Full-time employee” means an employee who works an~~  
2 ~~average of 35 hours in a week, calculated monthly.~~

3     ~~(2) “Part-time employee” means an employee who works less~~  
4 ~~than an average of 35 hours in a week, calculated monthly.~~

5     ~~(3) “Temporary employee” means an employee who works less~~  
6 ~~than 120 days per year.~~

7     ~~(e) (1) In the case of a disqualifying event, there shall be added~~  
8 ~~to taxable income, or the “net tax” as defined in Section 17039;~~  
9 ~~as the case may be, of the taxpayer for the taxable year in which~~  
10 ~~the disqualifying event occurs, the recapture amount computed~~  
11 ~~pursuant to subparagraph (A) and the interest amount computed~~  
12 ~~pursuant to subparagraph (B).~~

13     ~~(A) The recapture amount shall be computed by multiplying~~  
14 ~~the total amount of the business tax incentive allowed to the~~  
15 ~~taxpayer in the current taxable year and prior taxable years~~  
16 ~~excluding the amounts previously recaptured, by a fraction, the~~  
17 ~~numerator of which is the net decrease in full-time equivalent~~  
18 ~~employees as determined under subdivision (c), and the~~  
19 ~~denominator of which is the cumulative increase in the full-time~~  
20 ~~equivalent employees calculated from the last day of the first~~  
21 ~~taxable year the business tax incentive was claimed on the return~~  
22 ~~to the last day of the taxable year immediately preceding the~~  
23 ~~taxable year of the disqualifying event.~~

24     ~~(i) If the denominator of the fraction computed under~~  
25 ~~subparagraph (A) equals zero or a negative amount, 100 percent~~  
26 ~~of the business tax incentive shall be subject to recapture.~~

27     ~~(ii) If the fraction computed under subparagraph (A) is greater~~  
28 ~~than one, not more than 100 percent of the business tax incentive~~  
29 ~~shall be subject to recapture.~~

30     ~~(B) The interest amount shall be computed using the adjusted~~  
31 ~~annual rate established by Section 19521 from the due date of the~~  
32 ~~return for each taxable year in which the business tax incentive~~  
33 ~~reduced a taxpayer’s taxable income or “net tax” to the date of the~~  
34 ~~payment of additional tax resulting from the application of this~~  
35 ~~subdivision.~~

36     ~~(2) The amount of recapture computed under this subdivision~~  
37 ~~shall be first applied against the applicable business tax incentive~~  
38 ~~that reduced income or “net tax” for the earliest taxable year, and~~  
39 ~~then to the succeeding taxable year and thereafter, and if there is~~  
40 ~~any excess amount of recapture computed under this subdivision~~

1 that exceeds the amount of business tax incentives that reduced a  
2 taxpayer's taxable income or "net tax" in a prior taxable year, then  
3 such excess shall be applied against remaining carryovers of such  
4 business tax incentives, if any.

5 (3) The recapture amount imposed under this section shall be  
6 in addition to any other recapture amounts imposed under this part.

7 (f) This section shall not apply to a taxpayer with 25 or fewer  
8 employees and with net business income of less than five hundred  
9 thousand dollars (\$500,000) for the taxable year. For purposes of  
10 this subdivision, business income means:

11 (1) Income from a trade or business, whether conducted by the  
12 taxpayer or by a passthrough entity owned directly or indirectly  
13 by the taxpayer. For purposes of this paragraph, the term  
14 "passthrough entity" means a partnership or an "S" corporation.

15 (2) Income from rental activity.

16 (3) Income attributable to a farming business.

17 (g) Nothing in this section shall limit the authority of the  
18 Franchise Tax Board to audit the information provided by the  
19 taxpayer pursuant to subdivision (a).

20 (h) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
21 Division 3 of Title 2 of the Government Code shall not apply to  
22 any standard, criterion, procedure, determination, rule, notice, or  
23 guideline established or issued by the Franchise Tax Board  
24 pursuant to subdivision (a).

25 (i) The amount of the understatement of tax for the taxable year  
26 that is attributable to the disallowance or recapture of a business  
27 tax incentive, as defined in subdivision (b), shall be excluded from  
28 the calculation of any penalty imposed under Part 10 (commencing  
29 with Section 17001) and Part 10.2 (commencing with Section  
30 18401).

31 SEC. 2. Section 23603 is added to the Revenue and Taxation  
32 Code, to read:

33 23603. (a) Notwithstanding any other provision of this part,  
34 for taxable years on or after January 1, 2012, a taxpayer doing  
35 business in the state that claims any business tax incentive shall  
36 annually include on the timely filed original return, in the form  
37 and manner as required by forms and instructions prescribed by  
38 the Franchise Tax Board, the number of full-time, part-time, and  
39 temporary employees, as defined, employed by the taxpayer in the  
40 state for the current and preceding taxable years.

1     ~~(b) (1) Notwithstanding any other law, for any business tax~~  
2     ~~incentive that is allowed by an act that takes effect in a taxable~~  
3     ~~year beginning on or after January 1, 2012, if the taxpayer has a~~  
4     ~~disqualifying event, as defined, occur before the close of the~~  
5     ~~recapture period, the business tax incentive shall be subject to~~  
6     ~~recapture as specified in subdivision (c).~~

7     ~~(2) For purposes of this section, “disqualifying event” means a~~  
8     ~~net decrease, as determined under subdivision (c), in the average~~  
9     ~~number of full-time equivalent employees, calculated as of the last~~  
10    ~~day of the current taxable year.~~

11    ~~(3) For purposes of this section, “recapture period” shall, with~~  
12    ~~respect to the amount of any business tax incentive that reduces a~~  
13    ~~taxpayer’s net income or “tax” in the current taxable year, be the~~  
14    ~~first full taxable year beginning after the close of the taxable year~~  
15    ~~in which the business tax incentive reduces either the taxpayer’s~~  
16    ~~net income or “tax,” as defined in Section 23036, and the four~~  
17    ~~succeeding taxable years.~~

18    ~~(4) For purposes of this subdivision, a “business tax incentive”~~  
19    ~~means a credit, deduction, exclusion, exemption, or any other tax~~  
20    ~~benefit provided by the state added by an act that takes effect~~  
21    ~~beginning on or after January 1, 2012, enacted with the purpose~~  
22    ~~of creating new jobs in the state, and allowed to taxpayers engaged~~  
23    ~~in or carrying on any trade, business, profession, vocation or~~  
24    ~~calling, or commercial activity in this state.~~

25    ~~(c) (1) The net decrease in full-time equivalent employees in~~  
26    ~~the state shall be determined, on and after January 1, 2015, on a~~  
27    ~~full-time equivalent basis by subtracting from the amount~~  
28    ~~determined in subparagraph (A) the amount determined in~~  
29    ~~subparagraph (B).~~

30    ~~(A) The total number of full-time equivalent employees~~  
31    ~~employed in the three preceding taxable years by the taxpayer and~~  
32    ~~by any trade or business acquired by the taxpayer during the current~~  
33    ~~taxable year, divided by three.~~

34    ~~(B) The total number of full-time equivalent employees~~  
35    ~~employed in the state in the current taxable year by the taxpayer~~  
36    ~~and by any trade or business acquired by the taxpayer during the~~  
37    ~~current taxable year.~~

38    ~~(C) For purposes of this paragraph, employees in the state who~~  
39    ~~are employed in any trade or business sold by a taxpayer shall be~~

1 excluded in the determination of the amounts of subparagraphs  
2 (A) and (B):

3 (2) “Full-time equivalent” means either of the following:

4 (A) In the case of a full-time employee paid hourly qualified  
5 wages, “full-time equivalent” means the total number of hours  
6 worked for the taxpayer by the employee (not to exceed 2,000  
7 hours per employee) divided by 2,000:

8 (B) In the case of a salaried full-time employee, “full-time  
9 equivalent” means the total number of weeks worked for the  
10 taxpayer by the employee divided by 52:

11 (3) All employees of the trades or businesses that are treated as  
12 related under either Section 267, 318, or 707 of the Internal  
13 Revenue Code shall be treated as employed by a single taxpayer:

14 (d) For purposes of this section, all of the following definitions  
15 apply:

16 (1) “Full-time employee” means an employee who works an  
17 average of 35 hours in a week, calculated monthly:

18 (2) “Part-time employee” means an employee who works less  
19 than an average of 35 hours in a week, calculated monthly:

20 (3) “Temporary employee” means an employee who works less  
21 than 120 days per year:

22 (e) (1) In the case of a disqualifying event, there shall be added  
23 to net income, or the “tax,” as defined in Section 23036, as the  
24 case may be, of the taxpayer for the taxable year in which the  
25 disqualifying event occurs, the recapture amount computed  
26 pursuant to subparagraph (A) and the interest amount computed  
27 pursuant to subparagraph (B):

28 (A) The recapture amount shall be computed by multiplying  
29 the total amount of the business tax incentive allowed to the  
30 taxpayer in the current taxable year and prior taxable years  
31 excluding the amounts previously recaptured, by a fraction, the  
32 numerator of which is the net decrease in full-time equivalent  
33 employees as determined under subdivision (c), and the  
34 denominator of which is the cumulative increase in the full-time  
35 equivalent employees calculated from the last day of the first  
36 taxable year the business tax incentive was claimed on the return  
37 to the last day of the taxable year immediately preceding the  
38 taxable year of the disqualifying event:

1 ~~(i) If the denominator of the fraction computed under~~  
2 ~~subparagraph (A) equals zero or a negative amount, 100 percent~~  
3 ~~of the business tax incentive shall be subject to recapture.~~

4 ~~(ii) If the fraction computed under subparagraph (A) is greater~~  
5 ~~than one, not more than 100 percent of the business tax incentive~~  
6 ~~shall be subject to recapture.~~

7 ~~(B) The interest amount shall be computed using the adjusted~~  
8 ~~annual rate established by Section 19521 from the due date of the~~  
9 ~~return for each taxable year in which the business tax incentive~~  
10 ~~reduced a taxpayer's net income or "tax" to the date of the payment~~  
11 ~~of additional tax resulting from the application of this subdivision.~~

12 ~~(2) The amount of recapture computed under this subdivision~~  
13 ~~shall be first applied against the applicable business tax incentive~~  
14 ~~that reduced net income or "tax" for the earliest taxable year, and~~  
15 ~~then to the succeeding taxable year and thereafter, and if there is~~  
16 ~~any excess amount of recapture computed under this subdivision~~  
17 ~~that exceeds the amount of business tax incentives that reduced a~~  
18 ~~taxpayer's net income or "tax" in a prior taxable year, then such~~  
19 ~~excess shall be applied against remaining carryovers of such~~  
20 ~~business tax incentives, if any.~~

21 ~~(3) The recapture amount imposed under this section shall be~~  
22 ~~in addition to any other recapture amounts imposed under this part.~~

23 ~~(f) (1) In the case of any business tax incentive that is allowed~~  
24 ~~to be sold, assigned, or otherwise transferred under the provisions~~  
25 ~~of this part to another taxpayer, any such sale, assignment, or other~~  
26 ~~transfer shall only be valid if the seller or assignor expressly agrees,~~  
27 ~~and continues, to provide to the buyer or assignee and the Franchise~~  
28 ~~Tax Board, in the form and manner specified by the Franchise Tax~~  
29 ~~Board, any necessary information to calculate whether a~~  
30 ~~disqualifying event has occurred with respect to the seller or~~  
31 ~~assignor under the rules of this section.~~

32 ~~(2) In the case where a disqualifying event has occurred under~~  
33 ~~this section, the buyer or assignee shall be required to include in~~  
34 ~~its net income or "tax" the amount of any required recapture.~~

35 ~~(3) The rules of this subdivision shall apply to any business tax~~  
36 ~~incentive that is sold, assigned, or otherwise transferred under the~~  
37 ~~provisions of this part, notwithstanding any other provision of this~~  
38 ~~part to the contrary.~~

39 ~~(4) Notwithstanding any other provision of law, if a seller or~~  
40 ~~assignor fails to satisfy the reporting requirements of this~~

1 subdivision, then a notice of proposed deficiency assessment  
2 attributable to the business tax incentive with respect to which the  
3 reporting requirements were not satisfied may be mailed to the  
4 buyer or assignee within four years from the date on which the  
5 reporting requirements are satisfied by the seller or assignor.

6 (g) This section shall not apply to a taxpayer with 25 or fewer  
7 employees and with income subject to tax under this part of less  
8 than five hundred thousand dollars (\$500,000) for the taxable year.

9 (h) Nothing in this section shall limit the authority of the  
10 Franchise Tax Board to audit the information provided by the  
11 taxpayer pursuant to subdivision (a).

12 (i) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
13 Division 3 of Title 2 of the Government Code shall not apply to  
14 any standard, criterion, procedure, determination, rule, notice, or  
15 guideline established or issued by the Franchise Tax Board  
16 pursuant to subdivision (a).

17 (j) The amount of the understatement of tax for the taxable year  
18 that is attributable to the disallowance or recapture of a business  
19 tax incentive, as defined in subdivision (b), shall be excluded from  
20 the calculation of any penalty imposed under Part 10.2  
21 (commencing with Section 18401) and Part 11 (commencing with  
22 Section 23001).